

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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TANIA GALARZA,

Plaintiff,

v.

SMILEDIRECTCLUB, LLC, HEALTHCARE  
FINANCE DIRECT, LLC, PERIODONTAL  
SPECIALISTS, INC., and ERIC GUIRGUIS,  
D.D.S.,

Defendants.  
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: Case No. 1:21-cv-06958 (WFK) (JRC)  
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: JUDGE WILLIAM F. KUNTZ, II  
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: **DECLARATION OF JUSTIN**  
: **SKINNER IN SUPPORT OF**  
: **DEFENDANTS' MOTION TO**  
: **COMPEL ARBITRATION AND**  
: **DISMISS THE COMPLAINT**

I, **JUSTIN SKINNER**, pursuant to 28 U.S. Code § 1746, declare as follows:

1. I am the Chief Technology Officer of Defendant SmileDirectClub, LLC (“SDC” or the “Company”). In that capacity, I have personal knowledge of the facts set forth herein.

2. I make this Declaration in support of Defendants’ Motion to Compel Arbitration and to Dismiss the Complaint (the “Motion”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion and/or the Defendants’ Memorandum of Law in Support of the Motion.

3. SDC is an oral health company that provides DSO services,<sup>1</sup> including its proprietary and innovative telehealth platform to dental practices, and their affiliated dentists and orthodontists, that have engaged SDC for the provision of these services and for the supply of clear dental aligners and other products.

4. SDC works with licensed dentists and orthodontics to oversee care of its patients.

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<sup>1</sup> Dental Services Organizations (“DSO”) contract with dental practices to provide critical administrative, non-clinical business management and support. The creation of DSOs has allowed dentists and orthodontists to maximize their practice with the support of such professional office management.

5. Dr. Guirguis is one of the doctors within SDC's network of affiliated dentists and orthodontists and who specifically prescribed and supervised Plaintiff's treatment.

6. Patients seeking aligners can either visit a brick-and-mortar "SmileShop" for an in-person scan or they can use a doctor-prescribed impression kit, both of which result in the creation of 3D images to make custom clear teeth aligners.

7. A licensed dentist reviews the 3D images, photos, and medical history to prescribe and manage custom aligner treatment plan.

8. Before a consumer can become an SDC customer and benefit from the Company's clear aligner therapy services, they must first go through the Company's registration process. A consumer cannot become a customer or receive *any* services without registering. To begin the registration process, they must first create an SDC account.

9. Consumers can create an account directly through SDC's website (at [www.smiledirectclub.com](http://www.smiledirectclub.com)) or during an in-person visit to a SmileShop where they are required to complete the same online process. A consumer cannot become a SmileDirectClub customer without completing the registration process.

10. The final step of the registration process requires the consumer to agree to SDC's Informed Consent ("Informed Consent") and Terms & SmilePay Conditions (the Terms and SmilePay Conditions collectively are the "T&Cs"). During this step, the consumer is presented with an uncluttered page in which they must create password, enter their birth date, and then affirmatively click on an unchecked assent box.

11. According to the Company's records, Plaintiff Tania Galarza visited one of SDC's SmileShops in Staten Island, New York and registered as a new customer on January 21, 2019.

12. Set forth below is the electronic registration screen as displayed, except for the heading as described below, to a consumer at a SmileShop on January 21, 2019:

JUST ONE MORE THING

## Thank You For Your Purchase

Now, all you need to do is create a password and enter your date of birth below to finish setting up your account.

- ☒ This order is for me
- ☐ This order is for somebody else

Date of Birth

MM	DD	YYYY
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☐ I agree to SmileDirectClub's [Informed Consent](#) and [Terms & SmilePay Conditions](#)

How did you hear about us?

13. The electronic registration screen depicted above reflects a screen capture during an online impression kit order in January 2019. During a registration that takes place at a SmileShop, as is the case with Plaintiff's registration, the registration screen is identical except that instead of the heading titled "Thanks For Your Purchase," the SmileShop booking version has



a heading entitled “Thanks For Booking A Visit!” That is the only difference. Otherwise, the layout, presentation and appearance are identical.

14. Importantly, the process for consenting to the Company’s Informed Consent and T&Cs is identical whether it is performed online or in a SmileShop. In each instance, the checkbox itself is conspicuous and is not pre-checked. In other words, the user must manually check the box next to and confirm that “I agree to SmileDirectClub’s [Informed Consent](#) and [Terms & SmilePay Conditions](#).” Each of [Informed Consent](#) and [Terms & SmilePay Conditions](#) is clearly presented to the user in contrasting, underlined blue hyperlinks. Each is presented as a hyperlink that, when clicked, will take the consumer to a separate screen that displays the full, conspicuous text of each of the agreements. The consumer can read, download, and/or print these agreements. The presentation, text and appearance of each of the agreements is identical whether viewed online or at a SmileShop.

15. The consumer’s agreement to SDC’s terms is actually a two-step process. First, the consumer must affirmatively check the box next to “I agree to SmileDirectClub’s [Informed Consent](#) and [Terms & SmilePay Conditions](#).” Second, after checking that box, the consumer must click again and select the “Finish My Account” option in order to complete the registration.

16. If the consumer does not check the box agreeing to the terms of these agreements, she cannot proceed with the process and she cannot become a SmileDirectClub customer. As described below, SDC maintains electronic records that confirm the precise date and time of the keystrokes by the consumer clicking on and agreeing to the terms of the Informed Consent and T&Cs.

17. As previously noted, the full Informed Consent and T&Cs are presented to the consumer as a hyperlink, which will take her to a separate screen that displays the full, conspicuous text of each of the agreements.

18. The Informed Consent contains the following conspicuously-marked binding arbitration provision:

**AGREEMENT TO ARBITRATE**

AGREEMENT TO ARBITRATE – I hereby agree that any dispute regarding the products and services offered through SmileDirectClub and/or by my affiliated dental professionals, including but not limited to medical malpractice disputes, will be resolved through final and binding arbitration before a neutral arbitrator and not by lawsuit filed in any court, except claims within the jurisdiction of Small Claims Court. I understand that to initiate the arbitration, I must send a Demand for Arbitration via U.S. Mail, postage prepaid to Alex Fenkell, SmileDirectClub, LLC, Bank of America Plaza, 414 Union Str., 8th Floor, Nashville, Tennessee 37219. The Demand for Arbitration must be in writing to all parties, identify each defendant, describe the claim against each party, state the amount of damages sought, and include the names of the patient and his/her attorney. I agree that the arbitration shall be conducted by a single, neutral arbitrator selected by the parties and shall be resolved using the rules of the American Arbitration Association.

I further agree that any arbitration under this agreement will take place on an individual basis, that class arbitrations and class actions are not permitted, and that I am agreeing to give up the ability to participate in a class action.

Attached hereto as **Exhibit 1** is a copy of the entire Informed Consent (Version 7).

19. Various of SDC's servers maintain an electronic file for each customer, including Plaintiff. These files log each customer's transactions and interactions, including the date and time of each customer's keystrokes agreeing to the Informed Consent and T&Cs.

20. SDC's servers keep records based upon Coordinated Universal Time ("UTC").

21. According to the Company's records, Plaintiff visited the Staten Island SmileShop and registered as a new customer on January 21, 2019. During her registration process, Plaintiff was presented with the screen display depicted above at Paragraph 12.

22. As with all consumers, Plaintiff had an opportunity to click on the hyperlink and read the entirety of the Informed Consent and T&Cs.

23. Set forth below is a screenshot of the data exported from one of SDC's servers, which recorded the exact date and time that Plaintiff first viewed the screen (under the heading "DATE\_CREATED") and then manifested her agreement by clicking on the box next to "I agree to SmileDirectClub's [Informed Consent](#) and [Terms & SmilePay Conditions](#)" as of January 21, 2019 at 14:22:00 UTC (*i.e.*, 2:20 PM UTC)<sup>2</sup>:

ID	DATE_CREATED	DATE_UPDATED	DATE_REMOVED	ACCEPTED_AT	FIRST_NAME	LAST_NAME	CASE_ID	DOCUMENT_ID	PATIENT_ID	USER_ID	DOCUMENT_TYPE	EMAIL_ADDRESS
1266230	2019-01-21T14:22:00.184906Z	2019-06-10T22:00:09.212366Z		2019-06-10T22:00:09.212359Z	Tania	Galarza	1182963	8	1192148	1200153	consent	tmgalarza@gmail.com
1540435	2019-01-21T00:55:23.997168Z	2019-01-21T00:55:24.002047Z		2019-01-21T00:55:24.002037Z	Tania	Galarza	1182963	28	1192148	1200153	sms_terms	tmgalarza@gmail.com
3174207	2019-01-21T14:22:00.200827Z	2019-06-10T22:00:09.186268Z		2019-06-10T22:00:09.186259Z	Tania	Galarza	1182963	16	1192148	1200153	terms	tmgalarza@gmail.com

24. In addition, although not relevant here, this screenshot of the data exported from the Company's servers also shows that Ms. Galarza agreed to SDC's "sms terms" earlier in the day on January 21, 2019, at 12:55 AM UTC, most likely when she booked her SmileShop visit online.<sup>3</sup>

25. From time to time, SDC updates its Informed Consent and T&Cs.

26. The data also shows that Plaintiff agreed a second time to SDC's Informed Consent and T&Cs on June 10, 2019, at 10:00 PM UTC (under the heading "DATE\_UPDATED"). The heading "ACCEPTED\_AT" shows the last date of Plaintiff's keystrokes accepting each of the agreements.

<sup>2</sup> With apologies to the Court, this data capture admittedly is difficult to read as presented horizontally as laid out in Paragraph 23 of this Declaration. Accordingly, an enlarged version is attached at the last page following my signature.

<sup>3</sup> A consumer can book a SmileShop appointment online without having to complete the new customer registration process or assent to SDC's Informed Consent or T&Cs, but the consumer must agree to certain privacy terms and to receive texts relating to their treatment, which is indicated as "sms terms." This applies only to scheduling. As noted above, a person cannot become a SDC customer or begin treatment unless and until they agree to the terms of the Informed Consent and T&Cs.



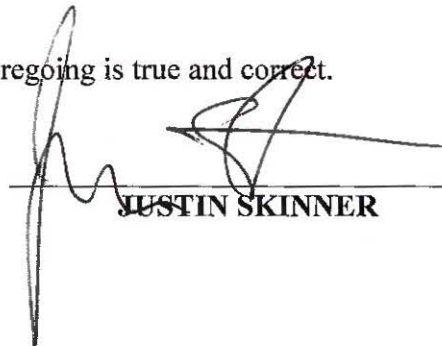
27. The agreements to which Plaintiff assented on June 10, 2019 were updated versions of the Informed Consent and T&Cs, specifically Version 7 of the Informed Consent. *See Exhibit 1.* The Company's records reveal that Plaintiff assented on January 21, 2019 to Version 5 of the Informed Consent. **Exhibit 2.** There is no difference in language relating to the binding arbitration clause between the two versions.

28. As before, Plaintiff was provided with an opportunity to read the full Informed Consent, including the arbitration provision, before agreeing to the updated Informed Consent.

29. As described above, the arbitration provision in Version 7 is identical to that in the previous version of the Informed Consent to which Plaintiff agreed on January 21, 2019 (Version 5).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5 day of May, 2022.

  
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JUSTIN SKINNER

ID	DATE_CREATED	DATE_UPDATED	DATE_REMOVED	ACCEPTED_AT	FIRST_NAME	LAST_NAME	CASE_ID	DOCUMENT_ID	PATIENT_ID	USER_ID	DOCUMENT_TYPE	EMAIL_ADDRESS
1266230	2019-01-21T14:22:00.184906Z	2019-06-10T22:00:09.212368Z		2019-06-10T22:00:09.212359Z	Tania	Galarza	1182963	8	1192148	1200153	consent	<a href="mailto:tmgalarza@gmail.com">tmgalarza@gmail.com</a>
1540435	2019-01-21T00:55:23.997168Z	2019-01-21T00:55:24.002047Z		2019-01-21T00:55:24.002037Z	Tania	Galarza	1182963	28	1192148	1200153	sms_terms	<a href="mailto:tmgalarza@gmail.com">tmgalarza@gmail.com</a>
3174207	2019-01-21T14:22:00.200827Z	2019-06-10T22:00:09.186268Z		2019-06-10T22:00:09.186259Z	Tania	Galarza	1182963	16	1192148	1200153	terms	<a href="mailto:tmgalarza@gmail.com">tmgalarza@gmail.com</a>



# EXHIBIT 1



### **How Does the SmileDirectClub Aligner Therapy System Work?**

SmileDirectClub's aligner therapy system is a series of invisible, BPA-free plastic aligners that apply subtle pressure to gradually shift your teeth. The invisible aligners are made to be worn in a specific sequence prescribed by your treating dentist. Each new aligner will gradually shift teeth. While every case is unique to each patient, the process typically takes approximately 4 to 8 months to complete. During treatment, an optional teeth whitening system may be used. You should be aware of the benefits, inconveniences and risks related to using aligners and teeth whitening products. Please be advised that you and your dentist may not be able to achieve all aspects of your chief complaint. This is due to factors beyond anyone's control, including the guidelines and parameters that must be followed with remote clear aligner therapy. If, with your chief complaint in mind, your treating dentist determines you are a candidate for treatment using the SmileDirectClub aligner therapy system - and you follow your treating dentist's instructions - you will receive the best possible outcome available using the SmileDirectClub clear aligner therapy treatment. Feel free to contact the SmileDirectClub patient care team to discuss any concerns you may have or to get in touch with your treating dentist.

Your aligner therapy treating dentist has asked us to let you know the following:

#### **Aligner Benefits**

- **DISCREET** – The aligners are made of clear, BPA-free plastic. The trays are thin, light weight and nearly invisible when worn - many people won't even know you're wearing them.
- **HYGIENE** – Because the aligners can be removed, you can eat, brush and floss normally, and the process of using aligners may improve your oral hygiene habits.

#### **Whitening Benefits**

- **WHITE TEETH** – The whitening system may lighten the colour of your teeth by removing stains.

#### **Aligner Risks**

- **DISCOMFORT** – Your mouth is sensitive, so you can expect an adjustment period and some minor discomfort from moving your teeth. You may also experience gum, cheek or

lip irritation when you initially use an aligner while these tissues adjust to contact with the aligner trays.

- **ALLERGIC REACTION** – It is possible for some patients to become allergic to the materials used to create your aligners. If you experience a reaction, please immediately discontinue use and inform your primary care provider and us so that we may advise your treating dentist.
- **TEMPORARY SIDE EFFECTS** – You may experience temporary changes in your speech or salivary flow while using aligners because of the presence of the aligner tray in your mouth.
- **CAVITIES, GUM OR PERIODONTAL DISEASE** – Cavities, tooth decay, periodontal disease, gingival recession, inflammation of the gums or permanent markings (e.g. decalcification) may occur or accelerate during use of aligners. These reactions are more likely to occur if you eat or drink lots of sugary foods or beverages, or do not brush and floss your teeth before inserting the aligners, or do not see a dentist for preventative check-ups at least every six months. In addition, in some circumstances discoloration or white spots may occur; small cavities may increase in size, causing sensitivity and, in some cases, pain or tooth breakage; gingival inflammation may increase, causing soreness and/or bleeding. If underlying periodontal conditions persist unchecked, they may become more prevalent and lead to tooth loss. You may have to discontinue aligner treatment. All of these symptoms will require you to seek care from a dentist of your choice.
- **SHORTENING OF THE ROOTS/RESORPTION** – The roots of some patients teeth become shorter (resorption) during use of aligners. It is not possible to predict which patients will experience it, but patients who have had braces in the past are at higher risk. Resorption can impact the long-term health of teeth. If resorption is detected by your regular dentist during orthodontic treatment, treatment may need to be discontinued or tooth loss may occur. If a primary (or "baby") tooth is present, any orthodontic movement would accelerate the resorption process, leading to its loss.
- **NERVE DAMAGE IN TEETH** – Tooth movement may accelerate nerve damage or nerve death, resulting in a root canal, other dental treatment, or loss of the tooth. It is not possible to predict which patients may experience nerve damage, but patients who have experienced tooth injury in the past or had restoration work on a tooth are at higher risk. If your regular dentist detects nerve damage prior or during your aligner therapy treatment, treatment may need to be discontinued or tooth loss can occur.
- **TEMPOROMANDIBULAR JOINT DYSFUNCTION (TMJ)** – Problems may occur in the jaw joints during aligner therapy treatment, causing pain, headaches or ear problems. The following factors can contribute to this outcome: past trauma or injury, arthritis, hereditary history, tooth grinding or clenching and some medical conditions. In the event that you experience any of these symptoms, please see your regular dentist.
- **IMPACTED AND SUPERNUMERARY TEETH** – Teeth may become impacted or trapped below the bone or gums. Sometimes some patients are born with "extra" or supplementary teeth. If you have impacted, un-erupted or supplementary teeth, aligners are not an ideal option.
- **SUPRAERUPTION** – If a tooth is not properly covered by an aligner, it may migrate outwards (supraeruption) leading to difficulty cleaning, gum disease, tooth decay and loss of tooth.

- **PREVIOUS DENTAL TREATMENT** – Aligners will not move implants and may not be effective on some dental restorations, such as bridges. Additionally, dental restorations, such as crowns, veneers, or bridges, may require replacement due to tooth movement.
- **ORAL PIERCINGS** – Piercings are contraindicated during aligner therapy and therefore should be removed during treatment. In some circumstances, failure to do so could result in fractures to the aligners or broken teeth leading to termination of aligner therapy treatment.
- **BONDED RETAINER** – Bonded retainers, attachments and buttons are contraindications during aligner therapy and should be removed prior to aligner therapy treatment. Should you choose to proceed with aligner therapy treatment, you must first have your bonded retainers, attachments or buttons digitally removed for purposes of creating your treatment plan and expect to treat the arch on which they are placed at the time of your imaging. Further, you agree that you are responsible for having such bonded retainers, attachments or buttons removed by your regular dentist before beginning aligner therapy treatment. You are also responsible for consulting with your regular dentist regarding the potential consequences of their removal and obtaining, at your expense, all dental care required for their removal. By signing the consent below, you are thereby confirming that you are aware that invisible aligners cannot move your teeth effectively with these devices in place and that they must be removed prior to commencing your aligner therapy treatment with the SmileDirectClub aligners.
- **OTHER RISKS** – Orthodontic treatment and the movement of teeth bring inherent and potential risks and side effects. In the case of aligner therapy, such risks include, but are not limited to, discomfort, swelling, sensitivity, numbness, sore jaw muscles, allergic reaction to dental materials, and unforeseen conditions that may be revealed during treatment which may necessitate extension of the original procedures or the recommendation of other patient-specific procedures. Additionally, the tissue attachment between the front teeth may become inflamed, which is a common result of aligner therapy. The procedure required to treat this, known as a frenectomy, is not a part of your prescribed aligner therapy treatment, but is a recommended adjunctive treatment for the best outcome and long-term stability of your smile.
- **SAFETY** – Aligners may break, be swallowed or inhaled. You may also have an allergic reaction to the materials used in the aligners.
- **GENERAL HEALTH PROBLEMS** – Overall medical conditions such as bone, blood or hormonal disorders, and many prescription and non-prescription drugs (including bisphosphonates) can affect the movement of the teeth and the outcome.
- **DURATION AND RESULT** – The length of time you wear the aligners and the results depend on many factors, including, but not limited to: the severity of your case, the shape of your teeth, or the amount of time you wear the aligners per day. The average person generally wears the aligners for 4 – 8 months, but your particular rate of tooth movement is impossible to predict and could take longer. If the duration is extended beyond the original estimate, additional fees may be assessed. Difficult cases may require IPR and/or extractions with traditional braces for ideal results. Please note that the related additional costs will be your responsibility.
- **RETAINERS** – Teeth may move again after you stop wearing the aligners. Retainers will be required to keep your teeth in their new positions for a lifetime. Your retainer should be worn full-time for 2 weeks and then nightly from then on. You can expect a retainer to last about one year, but this can vary greatly from patient to patient.



- **BITE ADJUSTMENT** – Your bite may change during treatment and may result in temporary discomfort. Your bite may require adjustment after use of the aligners.
- **BLACK TRIANGLES** – Teeth which have been overlapped for long periods of time may be missing the gum tissue and when these teeth are aligned, a "black triangle" appears below the interproximal contact.

### **Whitening Risks**

- **TYPE OF DISCOLORATION** – The whitening system will not lighten all teeth or restorations in teeth. Blue, gray, multi-colored, or striped discoloration may not respond to whitening. If you have gum recession or periodontal disease, the area of the tooth near the gum line may not respond to the whitening. Similarly, fillings, cavities or other damage will not lighten. Use of cigarettes, wine, coffee, tea, and similar stain producing agents will also slow whitening process.
- **WHITE/TOOTH COLORED FILLINGS** – White or tooth colored fillings will not lighten or may become softer after using the whitening system. These fillings may need to be replaced after whitening to match lighter teeth or if they become soft. Please note that the related additional costs will be your responsibility.
- **SENSITIVITY AND IRRITATION** – Gum irritation may arise from excessive use of whitening system, as might throat irritation if whitening agent is swallowed. Tooth sensitivity may occur during initial use. In addition, discomfort and possible permanent nerve damage can arise if whitening agent leaks into damaged or cracked teeth fillings.
- **REVERSIBLE** – Whitened teeth can darken again over time. Reduction of certain types of foods and beverages will reduce staining of teeth.

### **Healthy Teeth & Gums**

SmileDirectClub aligners are most effective if your teeth and gums are healthy. It is your responsibility to see a dentist within 6 months prior to starting SmileDirectClub aligners, to verify that your teeth and gums healthy prior to using SmileDirectClub aligners. It is also your responsibility to maintain and have follow-up dental care during and after SmileDirectClub aligner therapy.

### **AGREEMENT TO ARBITRATE**

**AGREEMENT TO ARBITRATE** – I hereby agree that any dispute regarding the products and services offered through SmileDirectClub and/or by my affiliated dental professionals, including but not limited to medical malpractice disputes, will be resolved through final and binding arbitration before a neutral arbitrator and not by lawsuit filed in any court, except claims within the jurisdiction of Small Claims Court. I understand that I am waiving any right I might otherwise have to a trial by a jury. I understand that to initiate the arbitration, I must send a Demand for Arbitration via U.S. Mail, postage prepaid to Alex Fenkell, SmileDirectClub, LLC, Bank of America Plaza, 414 Union Str., 8th Floor, Nashville, Tennessee 37219. The Demand for Arbitration must be in writing to all parties, identify each defendant, describe the claim against each party, state the amount of damages sought, and include the names of the patient and his/her attorney. I agree that the arbitration shall be conducted by a single, neutral arbitrator selected by the parties and shall be resolved using the rules of the American Arbitration Association.

I further agree that any arbitration under this agreement will take place on an individual basis, that class arbitrations and class actions are not permitted, and that I am agreeing to give up the ability to participate in a class action.

### **Informed Consent**

TELEHEALTH - I hereby consent to use SmileDirectClub's teledentistry platform so a state-licensed dentist and I can engage in telehealth as part of my aligner therapy treatment. I understand that "telehealth" includes the practice of health or dental care delivery, diagnosis, consultation, treatment, and transfer of medical/dental information, both orally and visually, between me and a state licensed dental professional who has engaged SmileDirectClub to provide certain non-clinical dental support organization services.

By signing this Informed Consent, I understand that I am certifying that: My dentist cleaned my teeth. My dentist took x-rays of my teeth. My dentist checked for and repaired cavities, loose or defective fillings, crowns or bridges. My dentist checked my x-rays and I have no shortened or resorbed roots. My dentist checked my x-rays and I have no impacted teeth. My dentist has probed or measured my gum pockets and says I do not have periodontal or gum disease. My dentist preformed a full oral-cancer screening in the last 6 months and I do not have oral cancer. I have no pain in any of my teeth. I have no pain in my jaws. I have no loose teeth. I have no "baby teeth" and all of my permanent teeth are present.

I further consent to SmileDirectClub sharing my personal and medical information with third parties, business associates, or affiliates for the purposes of aligner therapy treatment planning and/or manufacturing purposes.

I certify that I can read and understand English. I acknowledge that neither the dentist prescribing my aligner therapy treatment nor SmileDirectClub has made any guarantee or assurance to me. I have read this form and fully understand the benefits and risks listed in this form related to my use of SmileDirectClub aligners and whitening system. I have had an opportunity to discuss and ask any questions about aligner therapy treatment with a licensed state dentist who engaged SmileDirectClub to facilitate my treatment. I understand that neither the dentist who prescribed my aligner therapy treatment nor SmileDirectClub can guarantee any specific result or outcome. I further understand that my invisible aligner therapy treatment will only address the alignment of my teeth and will not correct my existing bite condition. In order to correct the current condition of my bite, I will need to seek more comprehensive treatment via my local dental professional. Because I am choosing not to engage the in-patient services of a local dental professional, I understand and accept that my teeth will be straighter than they currently are but may still be compromised.

I hereby grant SmileDirectClub the right to use photographs taken of me and my first name for educational and/or marketing purposes. I acknowledge that because my participation is voluntary, I will receive no financial compensation. I also agree that my participation confers upon me no right of ownership. I release SmileDirectClub from liability for any claims by me or any third party in connection with my participation or use of the invisible aligner therapy treatment. I also understand that my treatment is not conditioned on my agreement to the use of

my photographs or name, and that I can revoke this grant at any time by sending a written revocation to SmileDirectClub, who will then inform my treating dentist.

In the event that the dentist who reviews my chart and other information that I submit determines that I am not an appropriate candidate for the SmileDirectClub aligner therapy treatment, but that I am a candidate for more-advanced clear aligner treatment, I hereby consent to having all of my records in SmileDirectClub's possession (including without limitation dental impressions, digital scans, photographs, and medical history documentation) sent to Align Technology, Inc. for further review and treatment planning, including, but not limited to, contacting me to refer my case to an Invisalign-certified provider of my choosing or to market and sell me Invisalign products or services.

# EXHIBIT 2





### **How Does the SmileDirectClub Aligner Therapy System Work?**

SmileDirectClub's aligner therapy system is a series of invisible, BPA-free plastic aligners that apply subtle pressure to gradually shift your teeth. The invisible aligners are made to be worn in a specific sequence prescribed by your treating dentist. Each new aligner will gradually shift teeth. While every case is unique to each patient, the process typically takes approximately 4 to 8 months to complete. During treatment, an optional teeth whitening system may be used. You should be aware of the benefits, inconveniences and risks related to using aligners and teeth whitening products. Please be advised that you and your dentist may not be able to achieve all aspects of your chief complaint. This is due to factors beyond anyone's control, including the guidelines and parameters that must be followed with remote clear aligner therapy. If, with your chief complaint in mind, your treating dentist determines you are a candidate for treatment using the SmileDirectClub aligner therapy system - and you follow your treating dentist's instructions - you will receive the best possible outcome available using the SmileDirectClub clear aligner therapy treatment. Feel free to contact the SmileDirectClub patient care team to discuss any concerns you may have or to get in touch with your treating dentist.

Your aligner therapy treating dentist has asked us to let you know the following:

#### **Aligner Benefits**

- **DISCREET** – The aligners are made of clear, BPA-free plastic. The trays are thin, light weight and nearly invisible when worn - many people won't even know you're wearing them.
- **HYGIENE** – Because the aligners can be removed, you can eat, brush and floss normally, and the process of using aligners may improve your oral hygiene habits.

#### **Whitening Benefits**

- **WHITE TEETH** – The whitening system may lighten the colour of your teeth by removing stains.

#### **Aligner Risks**

- **DISCOMFORT** – Your mouth is sensitive, so you can expect an adjustment period and some minor discomfort from moving your teeth. You may also experience gum, cheek or

lip irritation when you initially use an aligner while these tissues adjust to contact with the aligner trays.

- **ALLERGIC REACTION** – It is possible for some patients to become allergic to the materials used to create your aligners. If you experience a reaction, please immediately discontinue use and inform your primary care provider and us so that we may advise your treating dentist.
- **TEMPORARY SIDE EFFECTS** – You may experience temporary changes in your speech or salivary flow while using aligners because of the presence of the aligner tray in your mouth.
- **CAVITIES, GUM OR PERIODONTAL DISEASE** – Cavities, tooth decay, periodontal disease, gingival recession, inflammation of the gums or permanent markings (e.g. decalcification) may occur or accelerate during use of aligners. These reactions are more likely to occur if you eat or drink lots of sugary foods or beverages, or do not brush and floss your teeth before inserting the aligners, or do not see a dentist for preventative check-ups at least every six months. In addition, in some circumstances discoloration or white spots may occur; small cavities may increase in size, causing sensitivity and, in some cases, pain or tooth breakage; gingival inflammation may increase, causing soreness and/or bleeding. If underlying periodontal conditions persist unchecked, they may become more prevalent and lead to tooth loss. You may have to discontinue aligner treatment. All of these symptoms will require you to seek care from a dentist of your choice.
- **SHORTENING OF THE ROOTS/RESORPTION** – The roots of some patients' teeth become shorter (resorption) during use of aligners. It is not possible to predict which patients will experience it, but patients who have had braces in the past are at higher risk. Resorption can impact the long-term health of teeth. If resorption is detected by your regular dentist during orthodontic treatment, treatment may need to be discontinued or tooth loss may occur. If a primary (or "baby") tooth is present, any orthodontic movement would accelerate the resorption process, leading to its loss.
- **NERVE DAMAGE IN TEETH** – Tooth movement may accelerate nerve damage or nerve death, resulting in a root canal, other dental treatment, or loss of the tooth. It is not possible to predict which patients may experience nerve damage, but patients who have experienced tooth injury in the past or had restoration work on a tooth are at higher risk. If your regular dentist detects nerve damage prior or during your aligner therapy treatment, treatment may need to be discontinued or tooth loss can occur.
- **TEMPOROMANDIBULAR JOINT DYSFUNCTION (TMJ)** – Problems may occur in the jaw joints during aligner therapy treatment, causing pain, headaches or ear problems. The following factors can contribute to this outcome: past trauma or injury, arthritis, hereditary history, tooth grinding or clenching and some medical conditions. In the event that you experience any of these symptoms, please see your regular dentist.
- **IMPACTED AND SUPERNUMERARY TEETH** – Teeth may become impacted or trapped below the bone or gums. Sometimes some patients are born with "extra" or supplementary teeth. If you have impacted, un-erupted or supplementary teeth, aligners are not an ideal option.

- **SUPRAERUPTION** – If a tooth is not properly covered by an aligner, it may migrate outwards (supraeruption) leading to difficulty cleaning, gum disease, tooth decay and loss of tooth.
- **PREVIOUS DENTAL TREATMENT** – Aligners will not move implants and may not be effective on some dental restorations, such as bridges. Additionally, dental restorations, such as crowns, veneers, or bridges, may require replacement due to tooth movement.
- **ORAL PIERCINGS** – Piercings are contraindicated during aligner therapy and therefore should be removed during treatment. In some circumstances, failure to do so could result in fractures to the aligners or broken teeth leading to termination of aligner therapy treatment.
- **BONDED RETAINER** – Bonded retainers, attachments and buttons are contraindications during aligner therapy and should be removed prior to aligner therapy treatment. Should you choose to proceed with aligner therapy treatment, you must first have your bonded retainers, attachments or buttons digitally removed for purposes of creating your treatment plan and expect to treat the arch on which they are placed at the time of your imaging. Further, you agree that you are responsible for having such bonded retainers, attachments or buttons removed by your regular dentist before beginning aligner therapy treatment. You are also responsible for consulting with your regular dentist regarding the potential consequences of their removal and obtaining, at your expense, all dental care required for their removal. By signing the consent below, you are thereby confirming that you are aware that invisible aligners cannot move your teeth effectively with these devices in place and that they must be removed prior to commencing your aligner therapy treatment with the SmileDirectClub aligners.
- **OTHER RISKS** – Orthodontic treatment and the movement of teeth bring inherent and potential risks and side effects. In the case of aligner therapy, such risks include, but are not limited to, discomfort, swelling, sensitivity, numbness, sore jaw muscles, allergic reaction to dental materials, and unforeseen conditions that may be revealed during treatment which may necessitate extension of the original procedures or the recommendation of other patient-specific procedures. Additionally, the tissue attachment between the front teeth may become inflamed, which is a common result of aligner therapy. The procedure required to treat this, known as a frenectomy, is not a part of your prescribed aligner therapy treatment, but is a recommended adjunctive treatment for the best outcome and long-term stability of your smile.
- **SAFETY** – Aligners may break, be swallowed or inhaled. You may also have an allergic reaction to the materials used in the aligners.
- **GENERAL HEALTH PROBLEMS** – Overall medical conditions such as bone, blood or hormonal disorders, and many prescription and non-prescription drugs (including bisphosphonates) can affect the movement of the teeth and the outcome.
- **DURATION AND RESULT** – The length of time you wear the aligners and the results depend on many factors, including, but not limited to: the severity of your case, the shape of your teeth, or the amount of time you wear the aligners per day. The average person generally wears the aligners for 4 – 8 months, but your particular rate of tooth movement is impossible to predict and could take longer. If the duration is extended beyond the original estimate, additional fees may be assessed. Difficult cases may

require IPR and/or extractions with traditional braces for ideal results. Please note that the related additional costs will be your responsibility.

- **RETAINERS** – Teeth may move again after you stop wearing the aligners. Retainers will be required to keep your teeth in their new positions for a lifetime. Your retainer should be worn full-time for 2 weeks and then nightly from then on. You can expect a retainer to last about one year, but this can vary greatly from patient to patient.
- **BITE ADJUSTMENT** – Your bite may change during treatment and may result in temporary discomfort. Your bite may require adjustment after use of the aligners.
- **BLACK TRIANGLES** – Teeth which have been overlapped for long periods of time may be missing the gum tissue and when these teeth are aligned, a "black triangle" appears below the interproximal contact.

### **Whitening Risks**

- **TYPE OF DISCOLORATION** – The whitening system will not lighten all teeth or restorations in teeth. Blue, gray, multi-colored, or striped discoloration may not respond to whitening. If you have gum recession or periodontal disease, the area of the tooth near the gum line may not respond to the whitening. Similarly, fillings, cavities or other damage will not lighten. Use of cigarettes, wine, coffee, tea, and similar stain producing agents will also slow whitening process.
- **WHITE/TOOTH COLORED FILLINGS** – White or tooth colored fillings will not lighten or may become softer after using the whitening system. These fillings may need to be replaced after whitening to match lighter teeth or if they become soft. Please note that the related additional costs will be your responsibility.
- **SENSITIVITY AND IRRITATION** – Gum irritation may arise from excessive use of whitening system, as might throat irritation if whitening agent is swallowed. Tooth sensitivity may occur during initial use. In addition, discomfort and possible permanent nerve damage can arise if whitening agent leaks into damaged or cracked teeth fillings.
- **REVERSIBLE** – Whitened teeth can darken again over time. Reduction of certain types of foods and beverages will reduce staining of teeth.

### **Healthy Teeth & Gums**

SmileDirectClub aligners are most effective if your teeth and gums are healthy. It is your responsibility to see a dentist within 6 months prior to starting SmileDirectClub aligners, to verify that your teeth and gums healthy prior to using SmileDirectClub aligners. It is also your responsibility to maintain and have follow-up dental care during and after SmileDirectClub aligner therapy.

### **AGREEMENT TO ARBITRATE**

**AGREEMENT TO ARBITRATE** – I hereby agree that any dispute regarding the products and services offered through SmileDirectClub and/or by my affiliated dental professionals, including but not limited to medical malpractice disputes, will be resolved through final and binding arbitration before a neutral arbitrator and not by lawsuit filed in any court, except claims within the jurisdiction of Small Claims Court. I understand that I am waiving any right I might



otherwise have to a trial by a jury. I understand that to initiate the arbitration, I must send a Demand for Arbitration via U.S. Mail, postage prepaid to Alex Fenkell, SmileDirectClub, LLC, Bank of America Plaza, 414 Union Str., 8th Floor, Nashville, Tennessee 37219. The Demand for Arbitration must be in writing to all parties, identify each defendant, describe the claim against each party, state the amount of damages sought, and include the names of the patient and his/her attorney. I agree that the arbitration shall be conducted by a single, neutral arbitrator selected by the parties and shall be resolved using the rules of the American Arbitration Association.

I further agree that any arbitration under this agreement will take place on an individual basis, that class arbitrations and class actions are not permitted, and that I am agreeing to give up the ability to participate in a class action.

### **Informed Consent**

TELEHEALTH - I hereby consent to use SmileDirectClub's teledentistry platform so a state-licensed dentist and I can engage in telehealth as part of my aligner therapy treatment. I understand that "telehealth" includes the practice of health or dental care delivery, diagnosis, consultation, treatment, and transfer of medical/dental information, both orally and visually, between me and a state licensed dental professional who has engaged SmileDirectClub to provide certain non-clinical dental support organization services.

By signing this Informed Consent, I understand that I am certifying that: My dentist cleaned my teeth. My dentist took x-rays of my teeth. My dentist checked for and repaired cavities, loose or defective fillings, crowns or bridges. My dentist checked my x-rays and I have no shortened or resorbed roots. My dentist checked my x-rays and I have no impacted teeth. My dentist has probed or measured my gum pockets and says I do not have periodontal or gum disease. My dentist performed a full oral-cancer screening in the last 6 months and I do not have oral cancer. I have no pain in any of my teeth. I have no pain in my jaws. I have no loose teeth. I have no "baby teeth" and all of my permanent teeth are present.

I further consent to SmileDirectClub sharing my personal and medical information with third parties, business associates, or affiliates for the purposes of aligner therapy treatment planning and/or manufacturing purposes.

I certify that I can read and understand English. I acknowledge that neither the dentist prescribing my aligner therapy treatment nor SmileDirectClub has made any guarantee or assurance to me. I have read this form and fully understand the benefits and risks listed in this form related to my use of SmileDirectClub aligners and whitening system. I have had an opportunity to discuss and ask any questions about aligner therapy treatment with a licensed state dentist who engaged SmileDirectClub to facilitate my treatment. I understand that neither the dentist who prescribed my aligner therapy treatment nor SmileDirectClub can guarantee any specific result or outcome. I further understand that my invisible aligner therapy treatment will only address the alignment of my teeth and will not correct my existing bite condition. In order to correct the current condition of my bite, I will need to seek more comprehensive treatment via my local dental professional. Because I am choosing not to engage the in-patient services of a local dental professional, I understand and accept that my teeth will be straighter than they currently are but may still be compromised.

I hereby grant SmileDirectClub the right to use photographs taken of me and my first name for educational and/or marketing purposes. I acknowledge that because my participation is voluntary, I will receive no financial compensation. I also agree that my participation confers upon me no right of ownership. I release SmileDirectClub from liability for any claims by me or any third party in connection with my participation or use of the invisible aligner therapy treatment. I also understand that my treatment is not conditioned on my agreement to the use of my photographs or name, and that I can revoke this grant at any time by sending a written revocation to SmileDirectClub, who will then inform my treating dentist.

In the event that the dentist who reviews my chart and other information that I submit determines that I am not an appropriate candidate for the SmileDirectClub aligner therapy treatment, but that I am a candidate for more-advanced clear aligner treatment, I hereby consent to having all of my records in SmileDirectClub's possession (including without limitation dental impressions, digital scans, photographs, and medical history documentation) sent to Align Technology, Inc. for further review and treatment planning, including, but not limited to, contacting me to refer my case to an Invisalign-certified provider of my choosing or to market and sell me Invisalign products or services.